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**Subject:** News Articles (For EPA Distribution Only)

## BNA DAILY ENVIRONMENT REPORT ARTICLES

## UN Regulators Meet to Seek New Limits for Chemicals, Wastes

Posted: Apr 24, 2017, 6:31 AM EDT

By *Bryce Baschuk*

Delegates from nearly 200 countries hope to stake new ground in curbing the global proliferation of harmful substances when they gather in Geneva.

From April 24 to May 5, parties to the Basel, Rotterdam and Stockholm (BRS) conventions will work toward setting new limits and United Nations-backed guidelines for chemicals and wastes.

Participants in the annual conferences of the parties hope to make “important strides” toward a less toxic future by listing additional chemicals into the annexes of the Rotterdam and Stockholm Conventions; establishing a new partnership on the environmentally sound management of household waste under the Basel Convention; and improving all three conventions through legal and technical decisions, BRS secretariat spokesman Charlie Avis told Bloomberg BNA.

More than 1,000 delegates and 80 ministers are expected to attend the conventions. Any progress made over the next two weeks would build momentum toward the December meeting of the UN Environment Assembly in Nairobi, Kenya, which this year is focused on pollution, Avis said.

### E-Waste Guidelines

Parties to the Basel Convention—which defines limits on the cross-border movement of hazardous waste and its disposal—will discuss improvements to their technical guidelines to curb the hazardous effects of electronic waste.

Two years ago, Basel parties adopted guidelines aimed at curbing trade in electronic waste from discarded mobile devices and computer equipment, which often contains harmful toxic materials like mercury, cadmium, asbestos and lead.

This year environmental advocates will urge parties to close a loophole in the current e-waste guidelines that allows broken electronic equipment to be exported without regard to the hazards they may pose.

Participants will also consider a joint Basel and Stockholm convention effort to set hazardous waste limits aimed at bringing greater clarity to whether certain wastes can be dumped in developing countries.

### Rotterdam Listings

Parties to the Rotterdam Convention—which requires countries to verify their trading partners’

consent to receive restricted chemical exports—will consider listing eight additional chemicals in Annex III of the convention.

That annex requires members to notify a receiving country when they plan to export restricted chemicals and participate in a “prior informed consent” procedure for hazardous chemicals and pesticides.

In September 2016, the Rotterdam Convention’s Chemical Review Committee recommended that parties include two highly toxic pesticides in Annex III—carbofuran and carbosulfan—which are used to control insects on a variety of crops.

Carbofuran is a highly toxic carbamate pesticide marketed as Furadan and sold by companies like the Philadelphia-based FMC Corp. Carbosulfan is another carbamate insecticide that is banned by the European Union.

#### New Voting Procedure?

Rotterdam parties plan to increase transparency for international exports of paraquat dichloride, fenthion, chrysotile asbestos, trichlorfon and tributyltin compounds.

Rotterdam parties may also consider an amendment to their convention to sanction a majority vote if all efforts to find a consensus on a particular issue or listing have failed.

Though the BRS conventions have traditionally adopted any decisions or amendments to the treaties on a consensus basis, Stockholm parties in 2015 voted to ban pentachlorophenol despite opposition from the Indian delegation.

Introducing a new voting process could circumvent India’s efforts to block the Annex III listing of paraquat dichloride, an herbicide considered toxic to humans and animals, and chrysotile asbestos, also known as “white asbestos.”

#### DecaBDE Listing

Parties to the Stockholm Convention—which bans the production, use and trade of certain persistent organic pollutants—will also consider new restrictions for several chemicals.

Specifically, participants will consider including decabromodiphenyl ether (DecaBDE), a flame retardant that is widely used in electronic products, in Annex A of the convention, which requires parties to eliminate the production and use of such chemicals.

Environmental groups said they would oppose the European auto industry’s effort to obtain any “open-ended” exemptions for legacy spare parts that contain DecaBDE.

Parties to the Stockholm Convention will also conduct their first evaluation of the treaty’s effectiveness, which could lead to “sobering” results, according to Joe DiGangi, a senior science and technical adviser at the International POPs Elimination Network (IPEN).

## Architect of Chemical Law Now Lobbying EPA



### Snapshot

- A leading figure in last year's chemical law is lobbying EPA for a chemical organization
- Former Sen. David Vitter (R-La.) also is lobbying for a refrigeration group and a manufacturing business

*By Rachel Leven*

Former Sen. David Vitter (R-La.), an architect of the landmark chemical law passed last year, is now lobbying the EPA on regulatory issues on behalf of a major chemical organization, federal records show.

The American Chemistry Council is just one of the handful of environment-related clients that Vitter, who now works at public strategy firm Mercury Public Affairs, has attracted in his first three months out of Congress. Vitter is currently not allowed to lobby his former colleagues, but has started to lobby the Trump administration.

Vitter's trek to K Street isn't rare. More than 400 former Washington lawmakers have turned around and joined the advocacy community, according to the Center for Responsive Politics. They include former Rep. Bart Stupak (D-Mich.), who served in Congress from 1993 to 2010 and now is a partner at Venable LLP, and former House Speaker John Boehner (R-Ohio), who served in Congress from 1991 to 2016 and currently works for Squire Patton Boggs as a senior strategic adviser.

Bloomberg BNA obtained its information on Vitter's lobbying through Senate Office of Public Records filings. April 20 marked the deadline for filing records of lobbying that occurred between Jan. 1 and March 31.

Senators are barred from lobbying the legislative branch for two years after leaving their seats. Vitter, who left the Senate after a failed run for Louisiana governor, served in the House from 1999 to 2005 and Senate from 2005 to 2017 and plans to lobby Congress when his "cooling off" period is over, he told Bloomberg BNA in an email.

## Environmental Lobbying Work

Vitter did not provide specifics about his work for the American Chemistry Council. The federal form shows he lobbied the Environmental Protection Agency on “regulatory issues.” Scott Openshaw, a spokesman for the council, told Bloomberg BNA in an email that Vitter will be “focused on a range of regulatory issues at EPA including those related to chemical management,” but didn't comment further on the council's regulatory priorities.

Also on Vitter's environmental docket is the the Cabot Corp., a chemicals and performance materials business. The corporation has paid the former senator to lobby on “Clean Air Act issues,” a first-quarter filing shows. Vanessa Craigie, a spokeswoman for Cabot, in an email would only say the former senator is working with the company on “environmental regulatory issues” and didn't provide additional details on its Clean Air Act priorities.

Additionally, Vitter is registered to lobby in the future for the Air-Conditioning, Heating, & Refrigeration Institute. He will be a part of a team monitoring issues such as budget happenings for the Energy and State departments, a filing shows.

Mercury's work for the air conditioning group will also include monitoring the status of the Kigali Amendment to the Montreal Protocol on Substances That Deplete the Ozone Layer that would phase down use of super-polluting hydrofluorocarbons. The institute has told Bloomberg BNA that the amendment, which was reached in October 2016, should be protected.

Vitter also will lobby on “mitigation issues” on behalf of the Morganza Action Coalition, which focuses on flood protection.

The former senator also is working on issues outside the environment sector, such as infrastructure and Justice Department-related topics. For example, he is registered to lobby the Atlantic Development Group, a real estate, rental and leasing company, on nonenvironmental issues.

## Vitter's Experience

Vitter, who chaired the Senate Environment and Public Works Committee from 2013 to 2015 and later chaired a subcommittee, was a major voice in the environmental space in his final years in the Senate. He is perhaps best known for winning re-election in 2010 despite his earlier involvement with a Washington, D.C., escort service, though the scandal contributed to his defeat in the governor's race.

The former senator played key roles in passing water infrastructure legislation (Pub. L. No. 113-121) and the Frank R. Lautenberg Chemical Safety for the 21st Century Act (Pub. L. No. 114-182).

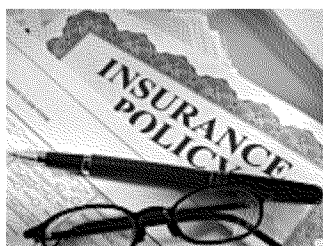
He also notably held up for 135 days the confirmation of Gina McCarthy to be EPA administrator under then-President Barack Obama (D) due to transparency concerns related to the agency. When he led the environment committee, he was known for his frequent letters to

federal agency heads.

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## Travelers Off the Hook for Thousands of Asbestos Claims



### Snapshot

- Manufacturer of asbestos-containing products can't recover from its insurer for the cost of settling tens of thousands of asbestos injury claims
- Coverage is barred because the underlying losses wouldn't have occurred but for asbestos, raw or within finished products

By Peter Hayes

A manufacturer of asbestos-containing products can't recover from its insurer the costs of settling tens of thousands of asbestos injury claims, the Third Circuit ruled April 21 (*Gen'l Refractories Co v. First State Ins.*, 3d Cir., 15-03409, 4/21/17).

The ruling means Travelers Ins. is off the hook for a trial court judgment of more than \$36 million.

General Refractories Co. must bear its own costs due to a clause in the policies issued by Travelers stripping coverage for injuries “arising out of asbestos,” the court said.

The appeals court reversed a ruling that the phrase “arising out of asbestos” is ambiguous.

The lower court reasoned that the phrase could be read to apply only to raw asbestos, rather than finished products.

Under Pennsylvania insurance law, the Third Circuit said, “arising out of” means the injury wouldn't have occurred “but-for” causation.

“Because the losses relating to the underlying asbestos suits would not have occurred but for asbestos, raw or within finished products, we will reverse the judgment of the District Court.”

Judge Thomas I. Vanaskie wrote the opinion, joined by Judges Kent A. Jordan and Cheryl Ann Krause.

Offit Kurman in Philadelphia represented General Refractories.

Gibson, Dunn & Crutcher in Los Angeles represented Travelers Surety and Casualty Co.

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For More Information

Full text of the opinion available at

[http://www.bloomberglaw.com/public/document/General Refractories Co v First State Insurance Co et al](http://www.bloomberglaw.com/public/document/General_Refractories_Co_v_First_State_Insurance_Co_et_al)

## Proprietary Data at Risk by Science Bill, EPA Staff Say



### Snapshot

- House-approved bill targeting science used by EPA would require release of proprietary data, agency staff say
- Congress must protect confidential business information in final legislation, Chemistry Council says
- No Senate bill introduced nor hearing set

By [Pat Rizzuto](#)

House-passed legislation would prevent the EPA from protecting proprietary chemical, pesticide or other data that companies submit, according to a staff analysis of the bill quashed by agency leadership.

It also could hinder the Environmental Protection Agency's ability to fulfill its mandates under a chemicals law amended last summer by Congress, the staff said.

The Honest and Open New EPA Science Treatment (HONEST) Act of 2017, H.R. 1430, would require the EPA to disclose even redacted information to anyone who signed a confidentiality agreement, staff said in an [analysis](#) written for the Congressional Budget Office. EPA leaders blocked the staff comments from reaching the Congressional Budget Office, which scores costs of the legislation, Bloomberg BNA first reported April 3.

The bill's requirement that the agency release redacted information means it could not protect trade secrets or intellectual property, according to EPA staff. Patients' medical records and other personal information gathered by academic or clinical researchers also would be at risk of forced disclosure, staff said.

The House approved the bill on a 228–194 vote March 29 that mostly followed party lines. The legislation would mandate all research used in EPA assessments and regulations be publicly available and reproducible. The House bill came to the Senate's Environment and Public Works Committee, where Chairman John Barrasso (R-Wyo.) has indicated an openness to addressing the issue, but no hearing is scheduled. Nor has a companion Senate bill been introduced as of April 21.

#### Congress Urged to Protect Data

Any legislation that would pass Congress must protect confidential business information and other competitive intelligence, the American Chemistry Council said in a statement provided Bloomberg BNA. The council, U.S. Chamber of Commerce and American Farm Bureau Federation are among the bill's supporters.

Stephen Caldeira, president of the Consumer Specialty Products Association, didn't voice a position on the bill, but said by email that the association supported “a common-sense balance between transparency and the protection of confidential business information.”

EPA staff's analysis raised many other concerns about the HONEST Act, saying the legislation would “grind to halt,” the agency's efforts to implement the Toxic Substances Control Act amendments of 2016.

For example, instead of using the best available science, as the TSCA amendments required, the agency would have to use only studies that meet the bill's public availability standards, staff said. “This approach would introduce research bias that would compromise the quality of the agency's work,” staff said. Many computer-aided analyses would not qualify, because the computer codes and models used in them are typically not available, it said.

#### Opponents Share EPA Concerns

Joanna Slaney, a legislative director for health at the Environmental Defense Fund, said that group opposes HONEST Act for many of the reasons highlighted in the EPA staff memo.



“We believe that the agency must be able to rely on the best available science in order to protect public health and that the HONEST Act would prevent EPA from doing so. The impact of the HONEST Act on TSCA, in effect preventing the agency from reviewing and regulating chemicals under this recently passed, strongly bipartisan law, is just one area of particular concern,” Slaney said by email.

Other opponents of the bill include the American Lung Association, Environmental Defense Fund and American Geophysical Union.

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For More Information

The EPA staff analysis is available at <http://src.bna.com/nAj>.

## Vietnam to Scale Back Chemical Tests in Victory for Exporters



### Snapshot

- Vietnam will relax chemical inspections of clothing and shoes meant for export markets
- Inspections will only be required for goods meant for the domestic market

By *Lien Hoang*

Vietnam will relax chemical inspections of shoe and clothing companies, pacifying an industry that exports many goods to U.S. businesses like Nike and Calvin Klein and that motivated the country's membership in the Trans-Pacific Partnership.

A regulation being drafted by the Ministry of Industry and Trade will require companies to check their textiles for formaldehyde and aromatic amines, both potential carcinogens, only when those products are headed into the Vietnamese market.

It would replace a rule Hanoi scrapped last year, which required such tests for all textiles entering Vietnam—even though a large portion was re-exported and never sold in the Southeast Asian country of 92 million.

The new regulation, which is meant to restrict Vietnamese consumers' exposure to risky chemicals, could be finalized as early as May, Nguyen Thi Hien Anh, a specialist in the ministry's science and technology division, told Bloomberg BNA by phone April 18.

It is expected to spell out the levels of formaldehyde allowed in three categories of textiles sold in Vietnam: Products for children under 36 months old could include up to 30 milligrams of formaldehyde per kilogram of cloth; products not intended for infants but that make direct skin contact would be restricted to 75 mg/kg; and the formaldehyde limit for all other products would be set at 300 mg/kg.

Formaldehyde is applied to clothing to prevent wrinkles and shrinkage.

For aromatic amines—which are organic compounds that have been converted from azo dyes used for coloring—the ministry has proposed a blanket cap of 30 mg/kg.

#### Exemptions for Certificate Holders

Companies that carry any of 12 specific environmental certifications would be exempt from the inspections, the government said. Those certifications are OEKO-TEX, Global Organic Textile Standard, EU Ecolabel, Green Mark Taiwan, Nordic Ecolabel, India's ECO-Safe, Korea Ecolabel, Green Label Thailand, China Environmental Labelling, the Netherlands' ECO Sustainable Textile, Australia's EcoLiving and Germany's Der Blaue Engel.

Products subject to the new regulation would include fabrics woven from silk, wool, other animal hair, cotton, flax yarns and synthetic fibers.

“If they see these chemicals have direct contact with human skin and could cause some kind of disease or harmful effect to human health, they have to control the quality,” Baker McKenzie senior regulatory adviser Tran Ngoc Trung said in a phone interview with Bloomberg BNA.

Trung, who is based in Hanoi, said the pending regulation is more “balanced” than its predecessor by letting firms import fabrics without checking for toxic substances. Most of those fabrics end up being exported as clothes, shoes, handbags or suitcases. Trung said trade ministry officials confirmed to him that customs agents would no longer require the chemical tests.

#### ‘Huge Expenses for Business’

Those tests were “incurring huge expenses for the business, while administrative gains are either unclear or insignificant,” Vietnam Chamber of Commerce and Industry chair Vu Tien Loc said at a dialogue between business and government in December.

Because there are few laboratories in Vietnam to conduct chemical tests, companies complained

that the exams were expensive and time consuming.

Vietnamese authorities want to shore up the textile and garment sector, which had hoped its 25 percent share of the country's exports would have increased through the Trans-Pacific Partnership. The trade deal was projected to give Vietnam's apparel and footwear producers a 50 percent boost to growth, higher than any other sector for all 12 member nations. But the industry, vital to a manufacturing-based economy expanding more than 6 percent annually, is regrouping now that the U.S. has withdrawn from the fledgling pact.

Vietnamese authorities also must answer to a growing middle class concerned about the safety of goods it consumes.

“Textile products are one of the essential products of everyday life, so ensuring the quality of textile products and protecting Vietnamese consumers’ rights are the responsibility of all social classes, including state management agencies,” the trade ministry said in a post soliciting comment on the chemical testing draft.

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For More Information

The Ministry of Industry and Trade's draft circular on formaldehyde and aromatic amines is available, in Vietnamese, at <http://src.bna.com/n3R>

## GREENWIRE ARTICLES

[House Dem introduces bill to move jobs away from D.C.](#)

Ohio Democratic Rep. Tim Ryan is toying with the idea of moving federal agencies outside Washington.

Yesterday, he introduced legislation, H.R. 2112, that would establish a commission to study relocating the agencies to other parts of the country.

The aim is to move good-paying federal jobs to economically depressed areas or to regions with more expertise in the agency's work.

### EPA could move from UNLV campus before lease expires

U.S. EPA may move its laboratories and other facilities off the University of Nevada, Las Vegas, campus sooner than its lease is up on the suggestion of the federal government.

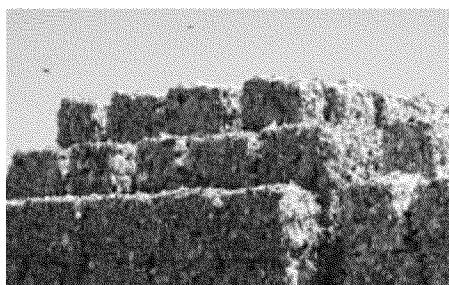
Leaving before its current lease is up in 2020 would be an "unfortunate loss" to UNLV, according to Gerry Bomotti, senior vice president for finance and business at the university.

## **CHEMICAL WATCH ARTICLES**

### **UN treaty listed flame retardants found in recycled plastic toys**

Ipen calls on COP8 to end Stockholm Convention recycling exemptions

21 April 2017 / Children's products, Electrical & electronics, Global, Persistent organic pollutants



A study by NGO the International POPs Elimination Network (Ipen) has found flame retardants, listed for global elimination under a UN treaty, in toys made of recycled plastic.

It identified the presence of OctaBDE, DecaBDE and HBCD – often used in the plastic casings of electronic products - in children's articles from 26 countries.

Both HBCD and OctaBDE are listed in the Stockholm Convention on persistent organic pollutants (POPs), under Annex A. This requires Parties to the convention to take measures to eliminate the production and use of listed substances. However, OctaBDE is subject to an exemption that permits recycling of materials containing the substance until 2030.

The report says: "Ending the Stockholm Convention recycling exemption would reduce wider human and environmental contamination and help preserve the credibility of recycling."

Thus, Ipen says in the report: "Recycling materials that contain POPs and other toxic substances contaminates new products, continues human and environmental exposure, and undermines the credibility of recycling."

A laboratory analysis of toys and other items, including a thermo cup, hair clips, combs and headdresses, found that 90% of the samples contained either OctaBDE or DecaBDE and 43% contained HBCD.

Ipen says it found samples of children's products exceeding proposed and existing hazardous waste limits. For example, 43 samples (39%) contained OctaBDE at levels greater than 50 parts per million (ppm) – one of the proposed hazardous waste limits under the Stockholm Convention.

### **Counterfeit toys**

But the toy industry insists that toys are safe and the study used samples of counterfeit products.

Adrienne Appell of the US trade group, Toy Industry Association (TIA), said that all toys sold in the US conformed to stringent federal safety standards and the Ipen report "should be taken with a grain of salt".

She said the items tested in the report were of unknown origin and could potentially have been counterfeit items.

Catherine Van Reeth of Toy Industries of Europe (TIE) said, even though sustainable waste management and a circular economy are "important principles", toy safety must never be compromised.

She said that reputable companies heavily invested resources to make sure their toys complied with strict safety requirements and it was "highly challenging to source viable safe alternatives to the virgin plastics used by manufacturers to meet the exacting standards of the Toy Safety Directive and other relevant legislation."

The study comes the week before the eighth meeting of the Conference of the Parties to the Stockholm Convention (COP8), which will take place in Geneva, Switzerland from 24 April to 5 May.

Parties at the COP8 will decide whether to continue allowing the recycling of materials containing OctaBDE and possibly make a new recycling exemption for DecaBDE.

Ipen has made the following recommendations:

- COP8 should end the toxic recycling exemption for brominated diphenyl ethers in parts IV and V of Annex A;
- Parties should not create a recycling exemption for materials containing DecaBDE; and
- COP8 should adopt the following low POPs content levels, HBCD: 100mg/kg (100ppm), OctaBDE (HexaBDE and HeptaBDE): 50mg/kg (50ppm), PCBs: 10mg/kg (10ppm).

However, Ms Van Reeth said lower content limits would have little effect on "disreputable

traders who don't play by the rules".

"In this respect, better enforcement of existing rules is a far more effective approach," she said.

Tammy Lovell

Business Reporter

### **Further Information:**

- [Ipen report](#)

### **South Korean business group hits out at registration costs**

Korea Employers Federation warns of K-REACH's effect on business

24 April 2017 / Chemical manufacturing, K-REACH, South Korea



One of South Korea's largest industry associations, the Korea Employers Federation (KEF), is lobbying the government to ease K-REACH requirements over concerns the tightened regulations will damage businesses.

The KEF submitted "policy recommendations" aimed at reducing the burden of K-REACH on business to several ministries – including the Ministry of Environment (MoE) – on 10 April. Its main concern is the cost of generating, or acquiring, substance risk and hazard data. It says that since K-REACH was enacted in 2015, some businesses have given up production because of the high costs of compliance.

The federation noted that, so far, only four substances have completed registration while the [June 2018 deadline](#) for registering 510 substances is not far away. This lack of progress, it says, is because of the excessive cost of registration, the lack of testing facilities and poor understanding of the legislation.

The federation suggests that risk assessment data should only be required if the substance is already registered and is used in annual quantities of ten tonnes or above.

Given the potential difficulties with registration, it says the proposed penalties for breaches of compliance with K-REACH should be scrapped. Under the amended K-REACH breaches can result in fines representing 5% of sales – an amount KEF says will force many companies to close.

Other KEF recommendations include:

- the definition of acceptable data for registration should be widened to include existing data or information on hazardous substances from overseas organisations, scientific treaties or research papers;
- only requiring information provision for registered substances;
- government support for production of test data and provision of consulting support;
- minimising the designation of dangerous substances; and
- ending the requirement to register unintended spillage of substances.

### **MoE's view**

In a published response, the MoE says the changes to K-REACH are necessary to improve safety and have broad support. However, it adds it will review "reasonable suggestions" from industry that improve the law.

The ministry points out the changes were drafted after canvassing public opinion, taking overseas legislation into account, and consulting other government departments and experts. Stakeholders' opinions were also included where reasonable. But it says it will positively consider any reasonable suggestions from industry and the KEF.

The ministry's main point is that improved chemical safety regulation was a promise made by the government to the South Korean people following the [humidifier biocides incident](#). Some of the KEF's proposals, it says, are therefore difficult to accept as they would "drastically limit" government policy agreed to by society as a whole.

It goes on to point out that the proposed changes are based on an investigation by a special National Assembly committee. Its report concluded there was a need to establish household chemical products safety management measures under pan-governmental cooperation, and that the registration threshold included in the current version of K-REACH is insufficient to protect public health and safety. It thus needs to be lowered to one tonne or above.

The MoE said businesses must show determination and take steps to prevent incidents similar to the humidifier biocides incident happening again. K-REACH, it says, is about industry understanding the risks posed by their chemicals so that public health can be protected from the risks inherent in exposure to chemicals.

K-REACH, says the ministry, represents "a minimum ethical and legal duty that the chemical industry must accept".

Sunny Lee

Asia editor

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### Further Information:

- [MoE press release \(in Korean\)](#)
- [KEF press release \(in Korean\)](#)
- [KEF proposal \(in Korean\)](#)

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